

comment is something which has not been considered either before the Assistant Director of Labour or the learned Judicial Commissioner. The point refers to the date of change of ownership of Bukit Lembu Division from the appellant to NLF. We are unable to find this date from the appeal records. Mr. W. Abraham, who is assisting the counsel for the appellant has confirmed to us from the Bar that he has received instruction from his client not to produce the Sale and Purchase Agreement. It is, of course, not for us to know the reason for such instruction, but the only satisfactory way of determining the date of change of ownership would be for the court to have a look at the agreement. In the absence of any evidence as to the date of change of ownership as opposed to the date of the handing over of the property to NLF, it seems to us that the appellant had failed to prove that it had complied with the requirement of regulation 8(1)(a). It is abundantly clear from regulation 8(1) that unless conditions (a) and (b) were complied with, the respondents' contracts of service should be deemed to have been terminated and as such they were entitled to termination benefits. There is no evidence that the offer made by NLF by their letter dated December 5, 1980 (Exhibit C4A) was made within the prescribed time i.e. "within 7 days of the change of ownership". Even if we were to adopt the date of handing over (February 1, 1981) as the date of change of ownership, the offer must be made within 7 days from that date. The only offer made by NLF is Exhibit C4A dated December 5, 1980, i.e. made nearly two months before the change of ownership. In the absence of any evidence of the actual date of change of ownership, it would be impossible to conclude that Exhibit C4A could constitute a proper notice under regulation 8(1)(a). There being no offer from NLF in accordance with regulation 8(1)(a), the question of the respondents not accepting the offer under regulation 8(1)(b) would and could not arise. In our view on this further ground the payment of the termination benefits to the respondents had been lawfully ordered.

For the above reasons, we dismiss this appeal with costs. We also order that the deposit be paid to the respondents on account of taxed costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.; Lobo Associates.*

**BAS MINI MUHIBBAH SDN. BHD. v.
ABDULLAH BIN SALIM**

[A.C.J. (Abdul Razak J.) June 22, 1983]
[Kuala Lumpur – Civil Appeal No. 45 of 1982]

Damages – Quantum – Loss of consortium – Claim by husband of injured wife – Award of \$3,000 granted.

The plaintiff's wife was run down by a bus resulting in injuries to her left leg which had to be amputated. She remained in hospital for 6 weeks. She had sued the bus company and recovered damages. The husband then brought an action against the bus company for loss of consortium. He said that as a result of the accident, his wife had resiled from his physical and moral companionship. She was by her physical and mental state no longer in a position to give him the comfort and care she once gave as a wife. The psychiatrist's report had certified that she was suffering from a schizophrenia simplex with a secondary depression following the amputation. It was also stated that she was now a changed person. She was sensitive and irritable. She hated the husband and denied him completely all sexual relationship. The present appeal was against the award by the Sessions Court of \$3,000 for general damages for the loss of her consortium.

Held, dismissing the appeal: the learned President had considered the matter carefully and fairly and given a proper award of \$3,000. There was no reason for disturbing his finding. In making the award he had not only considered the loss to the plaintiff of her consortium but the loss to him of her companionship in his social commitment to society which the state of her mental health had occasioned.

Case referred to:

(1) *Robertson v. Turnbull* (1981) N.L.J. 1211; *The Times* October 6, 1981.

CIVIL APPEAL.

A.D. Rajah for the appellants.

K.L. Rekhranj for the respondent.

Abdul Razak J.: An interesting point of law of significance to our society has arisen in this case and I think a little deliberation on it would be useful.

On the May 22, 1976 the plaintiff's wife suffered a mishap when she was run down by a bus resulting in injuries to her left leg which had to be amputated. She remained in hospital for a good number of days, a period of about 6 weeks to be precise. She had sued the bus company and recovered damages adequately, I would imagine, since no subsequent proceedings had ensued. The husband now brings an action against the bus company, because he said as a result of the accident, she had resiled from his physical and moral companionship. She is by her physical and mental state no longer in a position to give him the comfort and care she once gave as a wife. In one word, he has lost her consortium. The matter came before the Sessions Court, Kuala Lumpur where the

plaintiff was awarded damages for the loss the defendant admitted 100% liability for the damages suffered. They also conceded to \$450/- expenses incurred on getting the psychiatrist's report on the plaintiff's wife. The doctor had certified that she was suffering from a schizophrenia simplex with a secondary depression following the amputation. It was also stated in the report that she was now a changed person. She was sensitive and irritable. She hated the husband and denied him completely all sexual relationship.

The defendant had resisted however the claim on general damages, and special damages for loss of wages and cost of artificial limb, which totalled \$1,750/-. The learned President ordered the defendant to pay \$1,080/- as special damages. This consisted of \$15/- per day for loss of his taxi fares for 6 weeks during the time the wife was in hospital, at \$630/- and the \$450/- for the medical report. He awarded \$3,000/- for general damages for the loss of her consortium.

The defendant now appeals before me to say that the \$3,000/- was excessive and wrong in law. They said the learned President failed to distinguish between loss of the wife's services and loss of wife's consortium, for which they say there was no loss because the wife was employed on a full-time basis and was away from 7.00 a.m. to 7.00 p.m. except on weekends. They criticised the damages saying that the law on the loss of consortium has always determined the damages to be nominal. They attacked the amount of special damages as being also excessive or else they say the plaintiff should mitigate his loss.

I can perceive from the line of argument of Counsel however that a great deal of anxiety hangs over how much to give and what actually is the guiding principle in this sort of situation, by the authorities that have laid down in English courts from time to time. Before the decided case of *Robertson v. Turnbull*⁽¹⁾ the judicial line of thinking had always been that a spouse whether man or woman should necessarily have been compensated by the award for damages which one or the other had obtained by reason of the injury which the injured spouse has suffered and in turn deprived the other spouse his or her consortium. The accepted view hitherto had been that a man can claim for the loss of a wife's consortium if she is incapacitated, but not the wife if the husband is in a similar position. By logical analysis that would be an anomaly — why should there be a discrimination, all things being equal? But that

A is the very point. For a long time it was thought that they were not equal, at least, with all humility and deference, that is how I read the cases to mean which necessarily spell out the thoughts as well until *Robertson v. Turnbull* gave birth. Till then, it seems that a great many could not discard the idea that the wife is merely, if I may say so, a belonging of the husband. The superiority of men over women was the order of the day and nothing else could change the *status quo*. Indeed it was only very *lately* (not even in my day) that Oxford and Cambridge opened their doors to their female counterpart to debate on wordly affairs on equal terms. But time changes many things. It changes man's way of looking at women, for one. I suppose it was long ago found that since a wife belonged to the husband and she is his property, he must be compensated for the loss of his property if something grievously happen to her. I venture to say that must be the corner-stone around which the view on consortium originally was built. I cannot see any other necessary cause for it. But I suppose in time it began to dawn on many also that the rationale has another tricky if not unfortunate twist about it. To the women, and conveniently I suppose to the approval of a great many men, it must have meant also that because society looked upon them as merely a piece of property which can be owned that if the owner can no longer own it in the true sense then she is at liberty to seek other owners who could care for her, at least while the true owner is in no position to do so. But as I said what was thought to be fashionable then may not necessarily be so now. Universal education and suffrage, women's exertion for equal rights have, all had their impact on moulding men's thought to take a different turn. The idea of marriage being one of belonging to the other has in its gradual process of evolution meant to be less so than one of partnership and mutual reliance and dependence. If a wife's consortium is lost, therefore following that evolution, this meant loss of in fact nothing to the other. The law Lords must have felt in *Robertson v. Turnbull* that it was long overdue that what had all this while been considered by the courts as a historical anomaly be put right and put away in the history books for ever. They decided therefore that in all non-fatal injuries, the right of the husband to claim compensation for loss of his wife's consortium has ceased to exist. The reason their Lordships gave was to do so would be to open the door to a wide range of claims by other persons e.g. partners, employees, employers and creditors. I do not propose to say that was not the real reason behind their Lord-

ships' decision. I can only add that it seems to be true also that partners, employees, employers and creditors had existed if I may venture to say, a very long time ago and one could scarcely imagine that this reason had not also affected the minds of those Judges who had the misfortune of dealing with the same problem before. In any event their Lordships were prompted to say that for the reasons they gave the compensation for loss of consortium, if at all, should be nominal.

Coming now to the problem before us, Counsel for the appellant in seeking to vary the order of the learned President, as I said earlier seem somewhat to be obliged to say that in the light of the *Robertson's* case that the amount given was under the circumstances excessive. In viewing our own situation I do not pretend to be a social scientist to say that I know what is the real answer to the problem before me. I do not pretend to know also whether the Malaysian society had gone through the social transformation that it can safely be said to have reached such heights of sophistication akin to that in a western society. Although the social upheavals and habits that one sees in the western society apparently are also fast becoming that of ours I would say nevertheless that ours on the whole is a different type of society altogether. It is not that women are not emancipated or that the men are still undernourished with the western ideas or that the western culture has not reached our doors. It simply means as Mark Twain said East is East and West is West and never shall the twain meet. Against our way of life for different religious background and different culture the Western way of life does not easily fit into the life pattern. It may be we are slow in accepting it, I don't know. May be our outlook towards life is different. Thus marriage to most is a very sacred thing. It is an occasion of solemn vow to dedicate life to the wife alone. The loss of consortium to a true Muslim, would as far as I can venture to speak for them, mean loss of physical and moral companion which cannot be replaced in any form of manner. It is true a Muslim can remarry but the replacement may not be the same and cannot be the same, because marriage then is to a different person altogether. And I would say that what has been said of the wife must equally apply also to the husband. I would say thus that in so far as the rule regarding compensation for loss of consortium is concerned, the decision of *Robertson v. Turnbull* must with deference to their Lordships in that case therefore be applied here with reservation lest an injustice be done. It should in my humble view in the light of what

A I said, be distinguished, to allow the plaintiff not only a nominal compensation but such assessment of damages as would compensate him for the loss of the consortium. The learned President had considered the matter carefully and fairly along the same rationale as I have urged, and given a proper award of \$3,000/—. I do not see any reason for disturbing that finding. In making the award he had not only considered the loss to the plaintiff of her consortium but the loss to him of her companionship in his social commitment to society which the state of her mental health had occasioned.

C As far as the claim for the loss of profit for 6 weeks at \$15/- per day, I do not think I would say more than that Counsel for the appellant had not addressed me on the point. I can only assume that he had abandoned that ground. In any event I think \$15/- per day is fair judging by my experience in previous cases of what taxi drivers normally earn.

E I would dismiss the appeal therefore with costs with this observation that I think this matter is important enough for further deliberation and discussion by the highest judicial authority.

Appeal dismissed.

F Solicitors: *Lovelace & Hastings; K.L. Rekhray & Co.*

PUBLIC PROSECUTOR v. ONG TEE

[A. Cr. J. (Ajaib Singh J.) August 8, 1980]

[Seremban — Port Dickson Criminal Appeal No. 22 of 1976]

H *Dangerous Drugs — Heroin — Possession of 1.25 gms. of light brown powder found to contain 0.47 gms. of heroin — Chemist's report — Whether defective — Chemist need not state further heroin as found came within definition of Dangerous Drugs Ordinance, 1952 — Dangerous — Drugs Ordinance 1952, s. 12(2).*

I *Dangerous Drugs — Heroin — Absence of technical definition in Dangerous Drugs Ordinance, 1952 — Emergency (Essential Powers) Ordinance, 1971.*

This was an appeal against the decision of the learned President of the Sessions Court whereby he had acquitted and discharged the respondent on September 15, 1976 without calling for the defence on a charge of being in possession of a dangerous drug under section 12(2) of the Dangerous Drugs Ordinance 1952.